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# New York Surrogacy Law & CPSA Requirements

## PRACTICE LEADER

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## New York Surrogacy Law: What You Need to Know

New York has established one of the most comprehensive and protective legal frameworks for surrogacy in the country. With the enactment of the **Child-Parent Security Act** in 2021, the state legalized compensated gestational surrogacy and imposed clear statutory safeguards designed to protect surrogates, intended parents, donors, and children born through assisted reproduction.

New York's surrogacy law is both progressive and highly regulated. Compliance is essential, but when properly navigated, the framework provides clarity, enforceability, and meaningful protections for all parties involved.

### Establishing Legal Parentage Through Surrogacy in New York

Under New York law, intended parents may establish legal parentage **before the child is born**, regardless of genetic connection, marital status, or gender. Through a court-issued pre-birth order, the intended parents are legally recognized as the child's parents at birth.

This process provides immediate legal certainty, ensures accurate birth records, and eliminates the need for post-birth adoption or second-parent adoption proceedings. When the statutory requirements are met, New York's parentage process is clear, efficient, and reliable.

### The Role of Surrogacy Attorneys in New York

**Surrogacy attorneys** play a critical role in navigating New York’s detailed legal framework. Experienced counsel ensures that surrogacy arrangements comply with the Child-Parent Security Act, that all required protections are in place, and that the legal intent of the parties is fully reflected in enforceable agreements.

At Abrams Fensterman, we provide comprehensive surrogacy counsel throughout the process—from advising on eligibility and statutory requirements, to drafting and negotiating compliant surrogacy agreements, to managing the court proceedings necessary to establish legal parentage. Our role is to ensure that each surrogacy arrangement is legally sound, ethically grounded, and structured to protect all parties from the outset.

## **Gestational Surrogacy Requirements, Rights & Legal Protections**

New York has one of the most comprehensive gestational surrogacy laws in the United States. The state’s legal framework is designed to protect surrogates, intended parents, and children by requiring informed consent, independent legal representation, insurance protections, and court-approved parentage.

Abrams Fensterman advises surrogates and intended parents throughout New York on every aspect of surrogacy law, helping clients navigate statutory requirements while safeguarding their rights at every stage of the process.

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### **1. Is Surrogacy Legal in New York?**

Yes. Gestational surrogacy is legal in New York pursuant to the **Child-Parent Security Act** (“CPSA”).

The CPSA legalized gestational surrogacy and created a detailed regulatory framework governing:

- Who may act as a surrogate
- Who may be an intended parent
- What a surrogacy agreement must include
- How legal parentage is established

New York law emphasizes ethical practice, bodily autonomy, transparency, and enforceable protections for all parties involved.

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### **2. Legal Requirements for a Gestational Surrogate in New York**

Under New York surrogacy law, a gestational surrogate must meet **all** statutory requirements, including:

- **Minimum age:** At least **21 years old**
- **Immigration status:** A **United States citizen** or **lawful permanent resident**
- **Residency (in certain cases):** If neither intended parent has been a New York residence for at least six months, the surrogate must have been a **New York resident for at least six months**
- **No genetic connection:** The surrogate **cannot be genetically related** to the child
- **Medical evaluation:** Completion of a required **medical screening**
- **Informed consent:** Written informed consent to all medical procedures after understanding the risks
- **Independent legal representation:** Representation by an **independent New York-licensed attorney** from the beginning of the contractual process through the duration of the surrogacy

agreement

- Legal fees are typically paid by the intended parent(s), unless waived as permitted by New York law
  - **Health insurance:** The surrogacy agreement must provide that the surrogate will obtain **comprehensive health insurance coverage** that complies with New York law
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### 3. Legal Requirements for Intended Parents in New York

New York law also sets eligibility requirements for intended parents, including:

- **Citizenship or lawful residency:** At least **one intended parent** must be a U.S. citizen or lawful permanent resident
  - **Residency (in certain cases):** If the surrogate has not been a New York resident for at least six months, at least one intended parent must have been a New York resident for at least six months
  - **Independent legal counsel:** Intended parents must be represented by **independent New York-licensed legal counsel** from the initiation of the surrogacy contract through its duration
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### 4. Who May Be an Intended Parent?

New York surrogacy law expressly permits:

- **Single intended parents**
- **Unmarried intended parents**
- **Married intended parents**
- **LGBTQIA+ intended parents**

Intended parents may be a single adult or multiple adults who are spouses or intimate partners. Certain limited exceptions exist under New York law, including for spouses living apart.

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### 5. Are International Intended Parents Allowed in New York?

International intended parents may pursue surrogacy in New York **only in limited circumstances**. At least one intended parent must be a **U.S. citizen or lawful permanent resident**. International arrangements also raise additional legal and logistical considerations, including parentage recognition and travel documentation.

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### 6. Is Medical Necessity Required for Surrogacy in New York?

No. New York does **not** require a showing of medical necessity in order to pursue gestational surrogacy.

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### 7. Are Egg Donors, Sperm Donors, or Donated Embryos Allowed?

Yes. New York law permits surrogacy arrangements using:

- **Donor eggs**
  - **Donor sperm**
  - **Donated embryos**
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### 8. Is Estate Planning Required in a New York Surrogacy Arrangement?

Yes. New York requires intended parents to complete **estate planning** as part of the surrogacy process. This requirement is intended to protect the child and ensure continuity of care in the event of an unexpected circumstance.

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## 9. Is an Escrow Account Required?

Yes—**when the surrogacy agreement provides for compensation.**

New York law imposes specific escrow requirements, including:

- How long funds must remain in escrow
- The minimum amounts that must be deposited
- Mandatory contract language addressing escrow funding and disbursement

Escrow is a core consumer-protection feature of New York surrogacy law.

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## 10. Unique Protections Under New York Surrogacy Law

### New York Gestational Surrogates' Bill of Rights

Surrogates—and, if applicable, their spouse—must acknowledge receipt of the **New York Gestational Surrogates' Bill of Rights**, which outlines key legal and medical protections.

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## 11. Health Insurance and Medical Costs

The surrogate's health insurance must remain in effect:

- Throughout pregnancy, and
- For **12 months following** birth, stillbirth, miscarriage resulting in termination, or termination of pregnancy

Intended parents must pay for or reimburse:

- Co-payments
  - Deductibles
  - All other out-of-pocket medical expenses related to pregnancy, childbirth, and postnatal care during that period
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## 12. Life Insurance and Additional Coverage

Intended parents are required to provide certain insurance coverage for the surrogate, which may include:

- Life insurance
- Contractual liability or accidental death coverage

New York law also addresses additional insurance options, such as disability or lost-wage coverage, when requested by the surrogate.

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## 13. Mental Health Counseling

Surrogates may request **mental health counseling**, paid for by the intended parent(s), including counseling after delivery.

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## 14. Disclosure Regarding Public Benefits

Surrogacy agreements must include a statement acknowledging that payments to the surrogate may affect the surrogate's—or the surrogate's spouse's—public benefits or benefit amounts.

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## 15. Bodily Autonomy and Limits on Enforcement

New York law places strict limits on enforcement remedies. Specifically, **specific performance** is not available to compel a surrogate to:

- Become pregnant
- Agree to multiple embryo transfer
- Terminate or continue a pregnancy
- Undergo medical procedures, including a cesarean section

These provisions reflect New York's strong emphasis on bodily autonomy and informed consent.

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## 16. What Must Be Included in a New York Surrogacy Agreement?

New York surrogacy agreements must meet detailed statutory requirements, including provisions addressing:

- Independent legal representation
- Insurance and escrow
- Compensation and reimbursements
- Confidentiality and disclosures
- Dispute resolution
- Medical decision-making and informed consent

Failure to comply can render an agreement unenforceable.

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## 17. How Is Legal Parentage Established in New York?

New York allows intended parents to establish legal parentage through a **pre-birth parentage court proceeding**, providing clarity and certainty **before the child is born**.

## Speak With a New York Surrogacy Attorney

For further information about our surrogacy law group, please visit our [Surrogacy Regulatory Practice](#) guide or [contact our law firm](#) on Long Island at 516-328-2300, in Brooklyn at 718-215-5300, White Plains at 914-607-7010, Rochester at 585-218-9999 or Albany at 518-535-9477 to schedule an initial consultation.